

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA, )

4 Plaintiff, )

5 v. )

No. 6:05-60008-2-HO

6 PIROUZ SEDAGHATY, et al., )

7 Defendants. )

8  
9 TRANSCRIPT OF TELEPHONE CONFERENCE

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE

12 TUESDAY, MAY 4, 2010

13 EUGENE, OREGON

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23 Deborah Wilhelm, CSR, RPR

Court Reporter

24 P.O. Box 1504

Eugene, OR 97440

25 (541) 431-4113

## 1 APPEARANCES OF COUNSEL VIA TELEPHONE

2

3 FOR THE PLAINTIFF: CHRISTOPHER L. CARDANI  
4 United States Attorney's Office  
405 E. 8th Avenue, Suite 2400  
5 Eugene, OR 97401  
(541) 465-6771  
chris.cardani@usdoj.gov

6

7 CHARLES F. GORDER, JR.  
United States Attorney's Office  
1000 S.W. Third Avenue, Suite 600  
8 Portland, OR 97204-2902  
(503) 727-1021

9

10 FOR THE DEFENDANT: LAWRENCE H. MATASAR  
11 Lawrence Matasar, P.C.  
621 S.W. Morrison Street  
Suite 1025  
12 Portland, OR 97205  
(503) 222-9830  
larry@pdxlaw.com

13

14 STEVEN T. WAX  
Federal Public Defender  
15 101 S.W. Main Street, Suite 1700  
Portland, OR 97204  
16 (503) 326-2123  
steve\_wax@fd.org

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1 (Tuesday, May 4, 2010; 9:40 a.m.)

2 (The following proceedings were had in chambers.)

3 P R O C E E D I N G S

4 THE CLERK: Now is the time set for Criminal  
5 Case 05-60008, *United States of America versus Pirouz*  
6 *Sedaghaty*, time set for in chambers conference regarding  
7 timing and scheduling for the May 10, 2010, hearing.

8 THE COURT: Good morning. The first question I  
9 have for the defendant is do you waive the defendant's  
10 presence?

11 MR. WAX: Yes, Your Honor.

12 MR. MATASAR: Yes.

13 MR. WAX: That was Steve Wax speaking.

14 THE COURT: Okay. Steve, I've set this little  
15 phone hearing because of your e-mail to me. Actually,  
16 it was to Mary Pat, I guess, but that's a good way to  
17 talk to me. And I'm happy to tell you about your plans.  
18 I'd like to know what you have in mind, however.

19 MR. WAX: Well, we -- if we understand  
20 correctly, the government will have Evan Kohlmann  
21 available to testify at the *Daubert* challenge that we  
22 have filed against him, so we would think that would be  
23 one order of business.

24 We filed, which I assume Scooter has gotten to  
25 everyone, a number of pleadings that we would like to

1 take up. We have a -- you know, the motions in limine  
2 and a number of sub issues within that. We have an open  
3 issue with respect to the scope of the disclosures made  
4 in the witness and exhibit lists, and the issue we  
5 raised about, you know, direct case versus rebuttal,  
6 et cetera.

7 The government has indicated that, before you  
8 were able to join the call, that they are planning on  
9 filing a *Daubert* challenge to Colonel Lang, so that's  
10 the list of some of the things that we see.

11 We have not yet filed any voir dire motions.  
12 We plan on doing that. And one, in particular, I think  
13 might be good for us to discuss, at least preliminarily,  
14 and that would involve jury questionnaire and timing of  
15 such.

16 THE COURT: All right. All of you know quite a  
17 lot about me. I'm not an unknown quantity to you. And  
18 you all know -- well, maybe you don't know. I've only  
19 used a jury questionnaire one time in 28 years, and that  
20 had to do with whether there was sexual abuse in  
21 families of jurors, and so I thought that merited  
22 discussion in camera. So I don't do that very often.  
23 I'm happy to consider it.

24 Mr. Cardani and Mr. Gorder, did you want to  
25 talk about the scope of the Monday hearing?

1 MR. GORDER: Yes, Your Honor. This is Charles  
2 Gorder. I do want to confirm that we'll be filing a  
3 *Daubert* motion on the disclosures of Mr. Lang's  
4 purported expert testimony at the trial, and we'll file  
5 that today. So we would like to have that heard if we  
6 could.

7 I just really have one request with regard to  
8 Mr. Kohlmann, and I assume the defense would join with  
9 regard to Mr. Lang, is that perhaps we could take those  
10 issues up first in the hearing so that we could get our  
11 witnesses out of town and back home, you know, at a  
12 reasonable time.

13 But beyond that, I think the other issues that  
14 are pending are the exhibits that both sides are  
15 challenging, so we have that issue too on Monday.

16 THE COURT: All right. Well, anything more,  
17 and then I'll tell you what I have in mind?

18 MR. CARDANI: Judge, Chris Cardani. I've been  
19 taking some notes here, and there is just a couple of  
20 other things. The last thing Mr. Gorder mentioned, the  
21 exhibits, there have been extensive challenges on both  
22 sides, so there may be a need for the court to get  
23 really involved in an exhibit review, and call balls and  
24 strikes, which would help both of us shape the trial and  
25 make it more efficient.

1           And then the last thing is I brought up this  
2     issue at the last hearing about our need for  
3     stipulations on some documents that we obtained from  
4     Mr. Matasar in response to a grand jury subpoena. And  
5     we have not made any official progress on that. I  
6     talked to Mr. Matasar again yesterday, and he said he's  
7     going to speak to Mr. Wax today and let me know. But  
8     I'm getting a little apprehensive. And if we aren't  
9     able to arrange stipulations, I need to file a motion  
10    this week to get this on for Monday as well to get some  
11    movement on the admissibility of those documents.

12           THE COURT: Well, you folks try to work that  
13    out today. And if you don't, file your motion.

14           MR. CARDANI: Okay.

15           THE COURT: Now, Counsel, on *Daubert*  
16    challenges, some people in the South call them Dobare  
17    challenges, especially from Louisiana, but I think  
18    that's probably not it. At any rate, on those, lots of  
19    times the materials to be reviewed involve a pretty  
20    substantial amount of written material. And if either  
21    of you are going to be relying on written material, I'd  
22    like you to get that to me early so that I could have it  
23    read. And so give me a few days to do that. All right.

24           Then my plan is, right now I've got the entire  
25    Monday open. I don't hear enough here that would

1 require more than just Monday, and so we'll plan on  
2 doing everything Monday.

3 Just so that you know, I'm going to Washington,  
4 D.C. on the 18th. If there is any further work that you  
5 have in mind, that either of you have in mind, that I  
6 should be doing in Washington, D.C., then, please let me  
7 know in an appropriate way, because I plan on doing some  
8 review to make sure I feel confident in the rulings  
9 which we'll have at trial. And I'll probably be doing  
10 any reviews I do on the 19th.

11 All right. That being said, what else do you  
12 have, folks?

13 MR. GORDER: Your Honor, can I ask if the court  
14 security officer is going to be in Eugene on Monday?

15 THE COURT: Yes.

16 MR. GORDER: Okay.

17 THE COURT: Because I've already informed him  
18 that I'd like him here.

19 MR. GORDER: Okay. Your Honor, I do think  
20 that, at least preliminarily, I would like to address  
21 you in camera on the CIPA filings that defense counsel  
22 filed last week. Can't really talk about that on this  
23 telephone, but --

24 THE COURT: Are you in Eugene today?

25 MR. GORDER: No, I'm in Portland, I'm sorry.

1 THE COURT: All right. Well --

2 MR. WAX: I'm sorry, was that a request for an  
3 ex parte discussion?

4 THE COURT: That's what I --

5 MR. WAX: Because I'm quite concerned about,  
6 you know, following the CIPA, you know, Section 6  
7 procedures. I mean, we have filed, you know, formal  
8 notice and we have filed also some pretty extensive  
9 motions that we believe require a formal response from  
10 the government, and a discussion that is not ex parte,  
11 you know, in a classified session.

12 THE COURT: You'll have to take your own  
13 counsel on that, both of you. If either of you believe  
14 you are entitled to an ex parte session, then take  
15 whatever steps you need to request it. And I will have  
16 reviewed the CIPA filing. Anything further?

17 MR. WAX: Judge, with respect to Colonel  
18 Lang --

19 THE COURT: Yes.

20 MR. WAX: -- we don't yet have the government's  
21 pleading. We intend to have him there on Monday if that  
22 is what you want. I don't know, when we see their  
23 pleading, if we're going to be suggesting that there is  
24 just no need to have him. I mean, his credentials, as  
25 we see it, are impeccable. And I'm not sure quite what



1 the government is planning on doing, but we do need to  
2 know whether we should have him there because there are  
3 logistic and expense issues that we have to contend  
4 with.

5 THE COURT: If a motion is filed by tomorrow,  
6 you should have him at the hearing.

7 MR. WAX: Okay.

8 THE COURT: Anything further?

9 MR. MATASAR: Yes, Your Honor. I think it's  
10 probably better for all concerned to -- if it's okay  
11 with you, Chris, to address the general issue that we've  
12 been talking about with the business records, just alert  
13 the judge.

14 MR. CARDANI: Okay.

15 MR. MATASAR: Does that sound agreeable?

16 MR. CARDANI: Yes.

17 MR. MATASAR: Your Honor, there is a series of  
18 documents that the government has proposed be  
19 introduced. They all have the AHIF prefix. And those  
20 are documents that were obtained by the government  
21 pursuant to a subpoena long before the indictment. They  
22 served a subpoena on al-Haramain, and I was then  
23 retained. I was in contact with Mr. Cardani. And I  
24 provided him with several boxes of documents pursuant to  
25 the subpoena.

1           These documents, which he has received, he has  
2 sought to introduce some of them, and has indicated that  
3 he wants to consider them as business records, and has  
4 indicated that if we, in short -- and I think this is a  
5 fair way to describe it -- if we don't stipulate that  
6 they are business records, he intends to call me as a  
7 witness to assist in the authentication of the business  
8 records because I provided the records to him.

9           My response is generally that I certainly would  
10 not dispute the fact that I am in a chain of custody;  
11 that as a lawyer pursuant to a government subpoena, I  
12 provided him with documents. However, I'm not sure that  
13 gets him to the business records exception in the  
14 hearsay rule. So that's in general what we're talking  
15 about.

16           And Mr. -- Chris has indicated, you know, that  
17 he feels the documents are important to his case. And  
18 Mr. Wax and I plan to meet in detail today and tomorrow,  
19 but that is the general issue that you may be faced with  
20 on Monday as well.

21           MR. CARDANI: And this is Chris Cardani. I  
22 have no desire of calling Mr. Matasar as a witness,  
23 Judge. But if we can't get a stipulation that gets us  
24 closer to being able to get over the -- the defense has  
25 challenged a number of these exhibits, and we can talk

1 about that Monday at the hearing. And if we're not able  
2 to get a suitable custodian of records and lay the  
3 proper foundation for these documents, it may be because  
4 of how these documents were obtained by the government  
5 that Mr. Matasar may need to answer some questions  
6 outside the jury, of course this would be a pretrial  
7 hearing. I don't want to do that. I want to avoid  
8 that. And that's why we're having these discussions.

9 THE COURT: All right.

10 MR. WAX: Judge, there is one other logistical  
11 issue that exists for Monday. The pleadings that we  
12 filed through the court security officer are not in our  
13 possession. And if we're bringing Colonel Lang out  
14 on -- for Monday, I'm going to need access to those  
15 documents with him on Sunday, which I guess is an issue  
16 more for the U.S. Attorney's Office than for the court,  
17 perhaps, because the documents exist in the -- or are  
18 being held in the U.S. Attorney's Office. And we will  
19 then need them in the courtroom on Monday. And I don't  
20 believe the court security officer will allow us to  
21 transport them. So we just want to alert you that in  
22 terms of hearing preparation, I need access to them  
23 Sunday in Portland, and then they need to be brought to  
24 the courtroom for our use in court on Monday.

25 THE COURT: The only question I have about

1     that, I think it would be easier to make them available  
2     on Sunday in Eugene. And so I want you folks to talk  
3     about that, all right?

4             MR. WAX: Well, in terms of our expert, Judge,  
5     we would be wasting four hours of driving time if we  
6     have to go down to Eugene and back on Sunday and then  
7     back again on Monday.

8             THE COURT: I understand.

9             MR. WAX: I had assumed the U.S. Attorney,  
10    Mr. Gorder, is authorized to transport -- I mean, these  
11    materials are kept in a locked bag to which Mr. Matasar,  
12    Mr. Teesdale and I have, at least as I understand it,  
13    the only key. I have no problem with Mr. Gorder, you  
14    know, bringing them to the courtroom on Monday.

15            MR. MATASAR: Doesn't Scooter have copies of  
16    these documents? Wouldn't he be bringing his own copies  
17    to court?

18            MR. GORDER: Steve, maybe this is something we  
19    can talk off line about.

20            MR. WAX: Well, I just want to be sure that we  
21    will have access to the documents both in Portland for  
22    work with the expert, and, yes, the court, of course,  
23    has copies of them.

24            THE COURT: I do have them here in the safe.

25            MR. WAX: Yeah. So if we'd be able to have

1 access to them, you know --

2 THE COURT: But I'm not going to take them to  
3 Portland.

4 MR. WAX: No, no, no. I'm not asking you to  
5 take them to Portland. We have copies in the safe in  
6 the U.S. Attorney's Office in Portland.

7 MR. MATASAR: In Portland.

8 MR. WAX: We just need to have access to them  
9 in Eugene as well during the hearing on Monday.

10 THE COURT: You fellas try to work that out.  
11 And with regard to Portland, there is not much I'm going  
12 to do. With regard to Eugene, if I have to come down,  
13 we'll make them available. If I have to get Scooter out  
14 here, we'll make them available.

15 MR. WAX: We'll get back to you if we have an  
16 issue then.

17 THE COURT: Thank you. Anything further?  
18 Thank you very much. See you on Monday.

19 MR. GORDER: Thank you, Your Honor.

20 (The proceedings were concluded at 9:57 a.m.)  
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## 1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter  
3 for the State of Oregon, do hereby certify that I was  
4 present at and reported in machine shorthand the oral  
5 proceedings had in the above-entitled matter. I hereby  
6 certify that the foregoing is a true and correct  
7 transcript, to the best of my skill and ability, dated  
8 this 22nd day of September, 2011.

9  
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11  
12 /s/ Deborah Wilhelm

13 \_\_\_\_\_  
14 Deborah Wilhelm, RPR  
15 Certified Shorthand Reporter  
16 Certificate No. 00-0363  
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